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8 *d/b/a Las Vegas Athletic Clubs*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GUILLERMINA BARRADAS,

Plaintiff,

V.

SMITH-PALLUCK ASSOCIATES CORP.
d/b/a LAS VEGAS ATHLETIC CLUB,

Defendants.

CASE NO.: 2:19-cv-02036-RFB-DJA

**STIPULATION TO STAY CASE
PENDING THE
UNITED STATES SUPREME COURT'S
RULING ON THE DEFINITION OF AN
“ATDS”**

7 Plaintiff Guillermina Barradas (“Plaintiff”) and Defendant Smith-Palluck
8 Associates Corp., d/b/a Las Vegas Athletic Clubs (“LVAC”) stipulate to, and
9 respectfully request that this Court enter, a stay of this case pending the United
10 States Supreme Court’s forthcoming ruling in *Facebook, Inc. v. Duguid* (“*Duguid*”) on
11 the Telephone Consumer Protection Act’s (“TCPA”) definition of an “automatic
12 telephone dialing system” (“ATDS”).

²³ In *Duguid*, Facebook, Inc., challenges the Ninth Circuit’s definition of an ATDS. In contrast to the conclusions of the Third, Seventh, and Eleventh Circuits,¹

¹ The Third, Seventh, and Eleventh Circuits hold that equipment must either (1) store telephone numbers to be called using a random or sequential number generator, or (2) produce telephone numbers to be called using a random or sequential number generator. *See Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 464, 469 (7th Cir. 2020); *Glasser v. Hilton Grand Vacations Co.*, 948 F.3d 1301, 1310 (11th Cir. 2020); *Dominguez v. Yahoo, Inc.*, 894 F.3d 116, 119-21 (3d Cir. 2018).

1 the Ninth Circuit holds that equipment is an ATDS simply if it has the capacity to
 2 “store numbers to be called” and “to dial such numbers automatically.” *Marks v.*
 3 *Crunch San Diego, LLC*, 904 F.3d 1041, 1052-53 (9th Cir. 2018). Facebook, Inc., has
 4 requested—and the Supreme Court has now granted—certiorari on the following
 5 issue:

6 Whether the definition of ATDS in the TCPA encompasses any device
 7 that can “store” and “automatically dial” telephone numbers, even if the
 8 device does not “us[e] a random or sequential number generator.”

9 Pet’n for Writ of Certiorari, *Duguid*, No. 19-511 (Oct. 17, 2019); *see also Duguid*, 2020
 10 U.S. LEXIS 3559, at *1. The Supreme Court is now poised to resolve the growing
 11 circuit split and determine the meaning of an ATDS in the October 2020 term.

12 This imminent ruling by the Supreme Court warrants a stay in this case.²
 13 Whether LVAC called Plaintiff using an ATDS is a central issue.³ Here, a stay
 14 pending the *Duguid* decision will promote judicial economy, ensure efficient discovery
 15 and fairness, and avoid needless expense to the parties. *See Landis v. N. Am. Co.*,
 16 299 U.S. 248, 254 (1936) (recognizing the district court’s discretion to stay cases).⁴
 17 Additionally, the requested stay has a finite period that is likely short, as the
 18 Supreme Court “usually issues its decision within three months of oral argument;
 19 only the very rare case bounces around the chambers for more than six months, and
 20 almost every decision is issued in the same term in which the case is argued.” *The*

21 ² Plaintiff reserves all rights in other cases.

22 ³ Plaintiff alleges that LVAC called her on her cell phone using an ATDS. *See ECF No.* 1,^{¶¶} 28, 47, 52.

23 ⁴ *See also, e.g., Earl v. Briad Rest. Grp., Ltd. Liab. Co.*, No. 2:16-cv-02217-GMN-PAL,
 24 2017 U.S. Dist. LEXIS 125483, at *5 (D. Nev. Aug. 8, 2017) (staying case after the
 25 Supreme Court granted certiorari regarding an issue that “will directly impact”
 26 Plaintiff’s claim); *Bank of Am., N.A. v. Desert Shores Cnty. Ass’n*, No. 2:17-cv-01696-
 27 APG-NJK, 2017 U.S. Dist. LEXIS 95408, at *3 (D. Nev. June 20, 2017) (granting a
 28 stay pending the Supreme Court’s disposition of certiorari petition regarding an issue
 that “could be dispositive of this case, or at least of significant issues in the case”);
Alessi & Koenig, LLC v. Palo, No. 2:15-cv-01946-GMN-VCF, 2016 U.S. Dist. LEXIS
 98121, at *5 (D. Nev. July 26, 2016) (staying case after the Supreme Court granted
 certiorari regarding an issue that “will directly impact” the court’s jurisdiction).

¹ *Best for Last: The Timing of U.S. Supreme Court Decisions*, 64 Duke L.J. 991, 993 (Mar. 2015).

3 For these reasons, LVAC and Plaintiff stipulate and respectfully request that
4 this Court stay this case until the United States Supreme Court rules on the Ninth
5 Circuit's definition of an ATDS in *Duguid*.

6 DATED this 22nd day of July, 2020.

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IT IS SO ORDERED:

RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

DATED this 23rd day of July, 2020.